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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,154	12/02/2003	Kenneth A. Vlazny	3127-6066US	5283
24247	7590	11/30/2007		
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			EXAMINER THOMASSON, MEAGAN J	
			ART UNIT 3714	PAPER NUMBER
			NOTIFICATION DATE 11/30/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/727,154	VLAZNY ET AL.	
	Examiner	Art Unit	
	Meagan Thomasson	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-112 is/are pending in the application.
- 4a) Of the above claim(s) 1-25 and 40-112 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/2/05</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group II comprising claims 26-39 in the reply filed on August 26, 2007 is acknowledged.

### ***Response to Amendment***

Claims 1-25 and 40-112 are withdrawn from consideration. The examiner acknowledges the amendments made to claims 28 and 36. Further, the examiner acknowledges the amendments made to applicant's abstract and specification, filed August 26, 2007.

### ***Specification***

A substitute specification excluding the claims is required pursuant to 37 CFR 1.125(a) because applicant has submitted amendments to the specification without an accompanying clean version (without markings).

A substitute specification must not contain new matter. The substitute specification must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive

characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) and a statement that the substitute specification contains no new matter must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 29-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Specifically, claim 29 recites the limitation "providing the at least one patron with an opportunity to select at least one second runner". There is no mention of a first runner in claim 29 or the claims from which it depends, thus the limitation of selecting a second runner is unclear. Appropriate correction is required.

Claim 30 recites the limitations "the at least one first runner" and "the at least one second runner" in lines 3-4 of the claim. There is insufficient antecedent basis for this limitation in the claim. Claim 31 depends from claim 30 and is therefore also indefinite.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 26-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.** The claimed invention, i.e. a method of providing a patron with multiple opportunities to place a wager, is not patent eligible subject matter because the invention as claimed does not produce a useful, concrete or tangible result.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 26-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Brenner et al. (US 6,554,709 B1).**

Regarding claim 26, Brenner discloses a method of conducting a pari-mutuel gaming activity the method comprising providing at least one patron an opportunity to place at least one first wager on a race; and response to the at least one patron placing the at least one first wager, providing the at least one patron with an opportunity to place at least one second wager on the race. Fig. 3 of Brenner discloses allowing a

player to place a wager by selecting a wager amount, type, and a runner in steps **214,230** and **244**. A player may then place an additional bet on the same race, as shown in step **258**, wherein they again select a wager amount, type, and runner for said second wager.

Regarding claim 27, Fig. 3 of Brenner discloses the at least one second wager includes at least one runner of the at least one first wager in the Duplicate a Wager option of step **260**.

Regarding claim 28, the at least one second wager is not related to the at least one first wager if the player chooses the option More Bets Other Race in step **258**.

Regarding claim 29, Brenner discloses providing the at least one patron an opportunity to select at least one second runner, wherein the at least one second runner makes up a portion of the at least one second wager (Fig. 3, Select Runner step **244**, wherein placing a wager comprises the selection of multiple components including a wager amount, wager type, and a runner).

Regarding claim 30, presenting the at least one patron with the second opportunity to place the at least one second wager comprises generating a pool of wager options including the at least one first runner and at least one second runner, and displaying the pool of wager options to the at least one patron. That is, Fig. 3 shows that a player may choose Select Runner when placing a second wager in step **230**. Further, Fig. 15 discloses displaying the pool of wager options including the first runner and at least one second runner, wherein the player may select horses 1-9.

Regarding claim 31, Brenner discloses marking an area of the displayed pool of wager options representing the at least one first runner (Fig. 15, shaded area representing selected Horse #2).

Regarding claim 32, Brenner discloses displaying tote data in conjunction with at least one of the at least one first wager and the at least one second wager (Fig. 15, Odds column displayed in left-hand side of the screen showing the current odds associated with each runner). Further, Figs. 4 and 18-19 disclose displaying tote data, i.e. pool totals and probable payoffs.

Regarding claim 33, Brenner discloses a system for conducting a pari-mutuel gaming activity, the system comprising a display element for displaying information associated with a gaming activity, an input device for interacting with at least one patron, a computer configured with software enabled to conduct the gaming activity wherein a patron is provided with an opportunity to place at least one first wager on a race displayed on the display element, the at least one patron is presented with an opportunity to place at least one second wager on the race with the input device (User Terminal, Fig. 2).

Regarding claim 34, Brenner discloses the at least one second wager includes at least one runner of the at least one first wager (Fig. 3, Duplicate a Wager option in step 260).

Regarding claim 35, Brenner discloses the at least one second wager is not related to the at least one first wager (Fig. 3, More Bets Other Race option in step 258).

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### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meagan Thomasson whose telephone number is (571) 272-2080. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Meagan Thomasson  
November 20, 2007



**XUAN M. THAI**  
**SUPERVISORY PATENT EXAMINER**